

THE
T R I A L

OF

THE HON. RICHARD BINGHAM,

FOR

CRIM. CON.

WITH

LADY ELIZABETH HOWARD,

WIFE OF R. H. HOWARD, ESQ. PRESUMPTIVE HEIR
TO THE DUKES OF NORFOLK, AND DAUGH-
TER TO THE EARL OF SANDWICH.

BEFORE LORD KENTON

AND A SPECIAL JURY, Feb. 22, 1794.

WHO FOUND A VERDICT FOR THE PLAINTIFF
DAMAGES ONE THOUSAND POUNDS.

TAKEN IN SHORT HAND

BY A STUDENT OF THE INNER TEMPLE.

L O N D O N.

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MDCCLXXIV.

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TRIAL.

WESTMINSTER HALL,

Monday, February 24.

BERNARD EDWARD HOWARD,

against.

The Honourable RICHARD BINGHAM.

Counsel for the Plaintiff.

Mr. MINGAY,

Mr. BOWER,

Mr. DAMPIER.

For the Defendant.

Mr. ERSKINE,

and

Mr. GARROW.

MR. DAMPIER opened the pleadings. The declaration stated, that the Defendant debauched the Plaintiff's wife, and took her away from him. There was a second count for debauching her only. To the Plaintiff's 10,000l.

To this declaration the Defendant pleaded NOT GUILTY, and thereupon issue was joined.

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Mr.

Mr. Mingay's opening speech to the Jury.

May it please your Lordship—Gentlemen of the Jury,

I am to solicit your attention to a cause of great magnitude, as it respects the parties themselves, and of great importance, as it respects the public comfort, happiness, and morality of the country in which we live. The Plaintiff is Mr. *Howard*, the presumptive heir of the dukedom of *Norfolk*. The Defendant is the son and heir of Lord *Lucan*. The complaint, as you have heard from my learned friend who opened the pleadings, is, that the Defendant has debauched and withdrawn the affections of the lady of the Plaintiff Mr. *Howard*. Gentlemen, having stated that to you, I am perfectly certain I have secured a serious manly, and firm attention to this cause. I believe that many of you have been witnesses to the very pathetic, earnest, moral Addresses that have fallen from the noble and learned Judge who presides at this cause, on this sort of questions: and I am sure, I may, without offending his Lordship, affirm, that it has been with infinite concern during the time that he has,

with so much satisfaction and benefit to the public, and so much honour to himself, administered the justice of the country, that he has been under the necessity of discoursing so often, on so distressing and so important a subject. Gentlemen, one would have hoped the warnings that have fallen from so high an authority, provided sanctions of a much higher nature were not sufficient, would have prevented the repetition of a grievance similar to that which is the subject of this action. Gentlemen, I will not, because I cannot, imitate his Lordship in endeavouring to impress on your feelings the necessity of checking so grievous an evil as this. I will not do it too, because at the outset of the cause I am perfectly sure that men of your description will, from your own natures, receive every impression that such a case requires. You will weigh in those scales, in which questions of this sort ought to be weighed, with delicacy and with nicety, the importance of the object upon which you are to decide, and will, as far as in your power lies, give some reparation, (for a compleat one cannot be given by you) to the party injured.

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Gentlemen,

Gentlemen, having said thus much, I will state the circumstances which have given rise to this very important and very distressing inquiry. The Plaintiff, as I have told you, is a young gentleman, who is the heir presumptive of the present Duke of *Norfolk*, his name has been communicated to you, and you are sufficiently acquainted with the history of this country to know that name is of the first celebrity in it. The Defendant is the son of Lord *Lucan*, and therefore this is a question between two persons of high rank and station in the country. Gentlemen, the Plaintiff, Mr. *Howard*, had seen the lady, who was afterwards his wife, and who was one of the daughters of Earl *Falconberg*. He became much attached to her, was enamoured of her beauty, and was desirous of forming an honourable connexion with her. In the course of a very short time, having again met the lady, he had an opportunity of proposing himself to her as a husband, she accepted his proposal, it was communicated to both families, it met the approbation of both, and they were married sometime, I believe, in the year 1789. The month is not stated in my brief. On the 12th of August

August 1791 this lady had a son, and, gentlemen, it is much to the satisfaction of the Plaintiff, and I think he does himself infinite, honour by authorizing me to say, that he does not charge the Defendant with any thing improper till after the birth of this son; so that the legitimacy of that child cannot be at all questioned by the most inquisitive feelings of the most affectionate husband; but he did not long live in that comfort and happiness he at first enjoyed in the society of this beautiful lady.—Mr. *Bingham*, a young man, of elegant manners, of insinuating address, (and, to people of high fashion, going into the Park and Kensington Gardens, there is an opportunity, if men are disposed, to break in on the peace and comfort of those who live happy in the happiest of all states, when they pay all those attentions reciprocally to each other that can make that state happy) ingratiated himself, by frequently soliciting her attention, meeting her in the Park, walking with her, and whenever she went to a watering-place, he was there also. In short, wherever this lady was, he was sure to attend her. You may naturally suppose, that when this came to the ear
of

of the husband it wounded him deeply ; he took all the pains that an honourable man could take, that an affectionate man could take, that a feeling man could take, he reasoned with her, he endeavoured to prevail on her not to run the risk of throwing herself in his way, or to permit him to meet her, for fear of consequences that might prove fatal to her honour, and to his peace. Gentlemen, I am sorry to say that those intreaties, urged with all the zeal and warmth, with all the affection which a noble and ingenuous mind could suggest, had no successful effect ; and in consequence of Mr. *Bingham's* solicitations, and at last of the apparent partiality she shewed to this gentleman, the husband began to complain in a manner that did him infinite honour : he still wished, if possible, that she might be restored to his confidence ; he desired she might retire to her father's, that she might shake from her mind those impressions which Mr. *Bingham* had unfortunately made upon it with his insinuations, and with his addresses. I am afraid, and though not instructed (but instructed to the contrary) to deal harshly with this cruel lady,—I must state
facts

facts that you may do justice between the parties. I am afraid 'that at the time when her mind was consenting to a temporary absence from this splendid town, in which all that is splendid, and, I am afraid, all that is wicked is to be found : that her mind, at the time she was thus dealing with her husband, had been so far secured by Mr. *Bingham*, that all the time she was pretending to her husband that she wished to return again, if possible, to his affections and confidence ;— I am afraid the evidence in this cause will draw from you, that it had been previously settled between this lady and Mr. *Bingham*, that when she went away from her husband Mr. *Bingham* was to take her to another part of the country ; however that may be, I admit it can only be matter of inference. However, Gentlemen, when I state the dates, it will appear too clear, that Mr. *Bingham* had that influence over the lady's mind, as to shew, beyond all doubt, that she was not dealing candidly with any of the parties, except with Mr. *Bingham*, with whom she afterwards went off. On the 24th of July last, in consequence of a correspondence between her father

father and the husband, which I cannot read to you ; a correspondence which must wound the feelings of every heart that feels. I cannot give it in evidence, and therefore I shall not state it ; but in consequence of that correspondence, it was agreed that the lady should go down to Lord *Falconberg's* in the country. On the 24th of July the husband went down to the house of Lord *Petre's*, and the agony of his heart no man can tell, who did not see him. In addition to the honour which I have of knowing the noble Plaintiff, I was an eye witness to the agony of his mind, which this transaction occasioned. On the 24th of July a carriage was ordered by Lady *Elizabeth*, for the purpose, as she pretended, of going down to her father's in the country, and Mr. *Howard* no more expected the consequences that followed than any of you. The carriage being ordered, she went to Mr. *Gray's* shop at the west end of the town, from there she went to Park Lane, in a chaise provided by Mr. *Bingham*. She went to the house of Lord *Dunannon*, where Mr. *Bingham* then resided, he being related to his Lordship by marriage.

Gentlemen,

Gentlemen, the statement beyond this, would wound your delicacy. I must, in point of form, if put to it, prove the Criminal Connexion—I can do it—and loose proof, as it strikes me, will satisfy the justice of the case; and I am sure my learned friend, and his client *Mr. Bingham*, will not wish it to go beyond what is absolutely necessary to sustain the action. From the hour she quitted this town to the present time, *Mr. Howard* has been robbed of his wife. The wife that he adored, He has lost the mother of the child that he still adores. Gentlemen, what reparation can be made to him? Who can give an adequate satisfaction? You cannot give peace to his mind. You cannot deal out punishment proportionate to the offence. The Defendant cannot as a moral man, as a man of feeling, and a man of honour, say that he has consulted the honour of the lady for whom he pretends to have regarded. After she had become connected with the first house in point of rank in England. Gentlemen, the Lady at this moment is far advanced in pregnancy, and it is impossible that a divorce can take place before the birth of this child. Gentlemen, am I not

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entitled

entitled to say, the whole house of *Howard* has a right to complain? Have not I a right to say, if the first child dies, and that of which Lady *Elizabeth* is now pregnant, is a son, what is to prevent him being Duke of *Norfolk*, supposing his present Grace should die without issue.

I may be told the wisdom of Parliament may set all this to rights, but if my instructions be true, the departure of this lady from her husband, and the birth of that child will come so near, that the wisdom of Parliament will find itself puzzled to do justice. Does not this aggravate the injury? Is there a man living to be found, who will state to me, that in all views, this case is not of the utmost magnitude, of the most serious consequences, of the most distressing kind? I do not know what my learned friend Mr. *Erskine* will say in answer to it. He will address your feelings on the subject. He will bring forth some topicks of mitigation for his client, that may catch the ear, but which cannot convince the judgment; and although it may produce a momentary impulse on your minds, I am sure you will not surrender your judgments to the eloquence of
that

that learned advocate. Gentlemen, if Witnesses are called, and I provoke my learned friend to call them, we shall hear what they will prove; it has been stated, it has been insisted upon, and indeed we live in an age in which the most important questions are decided by newspapers, before they come into Courts of Justice. Some of the daily prints have stated offensively, in the hearing of all the noble relatives, that it was notorious, Mr. *Bingham*, had the heart of the lady, that her father told Mr. *Howard* so, and that the lady herself told him she would give him her hand, but could not give him her heart. If this is proved, my client must be a monster—a most extraordinary animal. Gentlemen, it is not true, and I can call the whole family to contradict it; but to combat shadows may not be worth while; I only say, if my learned friend states it, or means to found any thing upon it, I have all the family, or most of them; within the reach of the Court, ready to disprove that fact. Gentlemen, let me pause for a moment. What would you say of the father, who would compleat the offence? What would you say of Lord *Fauconberg*, if he had sacrificed his

child to a man of the first rank in England, instead of allowing her to take the most valuable of all possessions, the man of her heart, there is not a shadow of foundation for this, and therefore this thing should not have been said any where, and I am confident my learned friend would not throw out such a stigma, unless he has evigence to make it out satisfactorily to your minds. I know he cannot prove it. Gentlemen, the proofs in this cause, then, lie in a very narrow compass. I shall prove the marriage of the Plaintiff. I shall prove that this child, his son, was born on the 12th of August, 1791, and I shall prove the elopement under the circumstances I have stated to you. I can prove the distress and agony of the Plaintiff's mind ever since. What defence will be made I know not. Eloquence will be employed, and all that human ingenuity can do, will be done by my learned friend, from whom you will hear a most forcible and impressive speech. He will excuse me if I say, if he does only that, he does but little. If he calls witnesses, and furnishes to your minds, by legal evidence, any thing like an excuse, we shall hear it; but till I hear it, I shall

shall not believe it does exist. Suppose it did exist. (I am only putting it argumentatively) Suppose this lady had a partiality for Mr. *Bingham*, and after wards married Mr. *Howard*. Is it to be held forth as an argument, that the first lover has any excuse upon earth in a Court of Justice, for breaking in upon the peace of the husband, wounding his feelings, disgracing and dishonouring the lady—and all for what?—Because he was not sufficiently master of his passions, and could not controul the strength of his affection for this lady. Gentlemen, the best way that Mr. *Bingham* could have shewn his attachment and affection to this lady, would have been by conducting himself with integrity and honour towards her husband. Gentlemen, I will not fatigue you with any further observations, you will excuse me for the few I have made; it is a cause of great magnitude. as it respects the parties and the public. I shall call my witnesses, and shall prove all the necessary stages to intitle me to your Verdict. How far my learned friend will get the damages lessened by witnesses I cannot tell, but you will always distinguish between that which ought to make an ingre-

die

dient in your Verdict, and the arguments of Counsel merely. You will pay this Case the most serious attention; and after having heard the evidence on both sides, you will, as far as you can, administer impartially, Justice between the parties.

Evidence for the Plaintiff.

Mr. BOWER.

Mr. *Erskine*, do you put us to prove the Marriage?

Mr. *Erskine*. You need not, Sir.

Mr. BOWER.

My Lord, The Marriage is admitted to have been on the 24th of April, 1789.

ANNE HANCOCK, examined by MR. BOWER.

Q. Mrs. *Hancock*, were you at any time engaged in the service of Mr. *Howard*?

A. Yes, Sir.

Q. When did you go into his service?

A. On the 12th of August, 1791.

Q. In what capacity?

A. As wet nurse to the child.

Q. How long did you continue in the service

service of Mr. *Howard* and of Lady *Elizabeth*?

A. Near two years.

Q. Where do you live now?

A. I am now nurse to the child.

Q. So that you still live with Mr. *Howard*?

A. Yes.

Q. Do you remember at what time Lady *Elizabeth* left Mr. *Howard*?

A. On the 24th of July last.

Q. At what hour of the day did she leave him?

A. A little before seven o'clock in the evening.

Q. Will you tell us what passed on that day?

A. They were at *Norfolk House*, in St. James's-square.

Q. Tell us what happened on the day Lady *Elizabeth* went away?

A. Mr. *Howard* was gone from the House to Lord *Petre's*; he went away about 1 o'clock, and Lady *Elizabeth* a little before 7.

Q. Where was she going?

A. To her father's, Lord *Fauconberg*.

Q. Will you tell us how she went away?

A. Her

A. Her Ladyship sent to me, to inform me, as usual, that she was going out with the child, and she did go out with the child.

Q. Her ladyship said she should go out with the child, and did. Did you go along with her?

A. I did; We went to Mr. Grey's, a Jeweller, in Sackville-street. We went from Norfolk-house in about ten minutes. When we got to Mr. Grey's, Lady Elizabeth gave me a letter, and desired me to give it where it was directed.

Q. To whom was it directed?

A. To her maid at Norfolk-house.

Q. Did you carry it then to Norfolk-house?

A. I went away for Norfolk-house immediately; her Ladyship alighted at Mr. Grey's and therefore I left her; and she has never come back since.

Q. Do you know in what company she went away from Grey's?

A. I do not.

Cross Examined by Mr. ERSKINE.

Q. I fancy this was no great surprise upon you?

No answer.

Q. Did you perceive no disagreement between Mr. *Howard* and Lady *Elizabeth*?

A. I knew of no disagreement, I knew that she was going to be separated from her husband, and that she was going to her father's—

Lord KENYON.—Do you mean a visit, or a permanent separation?

A. A separation; I understood, my Lord.

Mr. ERSKINE.—I will ask you a plain question. As you had various opportunities of seeing Mr. *Howard* and Lady *Elizabeth*, did you ever see greater unhappiness than subsisted between them?

A. I only know this; I have seen her unhappy many times, though I did not know on what account.

Q. Did you ever see her happy?

A. I have seen her happy sometimes.

Q. Not so often as the contrary?

A. No, Sir.

Q. Did you not know that her going to Lord *Fauconberg's* was not on a visit, but because she and her husband would not live longer together?

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Q. I

A. I did not know it.

Mr. MINGAY.—Whatever this Witness knows, she knows only from Lady *Elizabeth*, and therefore it is no Evidence.

Mr. ERSKINE.—Q. Were you ever present at any dispute between Mr. *Howard* and Lady *Elizabeth* ?

A. Never.

Q. Did you ever, after having gone to bed get up, and were obliged to get up again and dress yourself ?

A. Never.

SARAH SCRIVEN *examined by* Mr. DAMPIER.

Q. In whose service did you live in the year 1789 ?

A. In Mr. *Howard's* and Lady *Elizabeth's*.

Q. In what capacity ?

A. As Lady *Elizabeth's* maid.

Q. Where did Mr. *Howard* and Lady *Elizabeth* live before they went away ?

A. They were at Norfolk-house.

Q. On what day did they go away ?

A. On Wednesday, the 24th of July.

Q. Where was Lady *Elizabeth* going ?

A. She

A. She was going to the country, to her father's.

Q. When did Lady *Elizabeth* go out?

A. A little before seven o'clock in the evening of the same day on which Mr. *Howard* went to Lord *Petre's*.

Q. Did you go out with Lady *Elizabeth*?

A. No, Sir; I did not.

Q. Did you see the last Witness when she returned?

A. She returned with a letter.

Q. Who was that letter from?

A. From Lady *Elizabeth*.

Q. Did you afterwards see Lady *Elizabeth*?

A. Yes, Sir.

Q. Where?

A. At Lord *Dungannon's*, *Henrietta-street*, *Cavendish-square*.

Q. When was that?

A. On the 29th of November.

Q. JURYMAN.—Last November?

A. Yes, Sir.

Mr. DAMPIER.—Who was with her?

A. Mr. *Bingham*, was in the house with her.

Q. Did you live again in Lady Elizabeth's service.

A. I did ; I went into her service on the 7th of December last, and lived in the house with them.

Q. You say Mr. Bingham lived there.

A. He did.

Mr. ERSKINE—No doubt this Lady and Gentleman have lived together ever since as man and wife, and therefore there is no necessity to prove the adultery.

Cross examined by Mr. Garrow.

Q. When did you go into the service of Mr. Howard and Lady Elizabeth.

A. About eight or nine months after their marriage.

Q. From being Lady Elizabeth's maid, I take it you were often about her person, and therefore had an opportunity of seeing whether she was happy or otherwise?

A. I certainly had.

Q. From the time you entered into her service did she appear to you to be a happy wife, or very much the contrary?

A. Very unhappy.

Q. What

Q. What led you to form that conclusion, that she was very unhappy, and that that was the constant state of her mind?

A. From seeing her repeatedly very unhappy, and apparently very much distressed.

Q. You have told us Mr. Howard had gone to Lord Petre's. How long had they taken leave of each other?

A. That very day that Mr. Howard left town, which was the very day Lady Elizabeth left Norfolk house.

Q. Had you lately before that day any opportunity of learning that there was any misunderstanding between Mr. Howard and lady Elizabeth?

A. They were more unhappy lately than they had been before.

Q. Do you recollect any occasion, after the family had retired to rest, when you were obliged to get up again?

A. No sir.

Q. Did you ever hear any words between Mr. Howard and Lady Elizabeth?

A. I have frequently heard words between Lady Elizabeth and Mr. Howard.

Q. Do you recollect any particular occasion?

A. No sir, it was very frequently so.

Q. Do you remember any occasion on which Mrs. *Handcock*, after having been half undressed, and about to retire to rest, was prevented from retiring, and was obliged to dress herself again, in consequence of something that alarmed you, or some of the rest of the family?

A. No sir.

Q. Perhaps I shall be able to bring it to your recollection. Did you ever collect the cause of her uneasiness?

A. From her having married a man she disliked.

Q. Do you know how long they were together at their taking leave of each other?

A. For two hours, or more, they were together alone; after which Mr. *Howard* went to Lord *Petre's* at two o'clock.

Q. Was this immediately on leaving your lady?

A. Yes, sir.

Q. Now,

Q. Now, madam,—On lady *Elizabeth's* leaving Mr. *Howard*, did you learn from her Ladyship what had been resolved?

Mr. *Mingay*—That is no evidence.

Mr. *Erskine*—I shall submit to your Lordship on every principle of law; and on determinations founded on those principles I have a right to get at every thing that can shew, from the mouth of lady *Elizabeth*, what her situation with her husband was.

Lord *Kenyon*—You need not labour to shew that she was discontented with her situation, this is among the *res gestæ* of the cause.

Mr. *Garrow*—Q. After the last meeting with her husband Lady *Elizabeth* had communicated that she was going to leave Mr. *Howard*?

A. She said she had been taking leave of Mr. *Howard*.

Q. Do you remember any particular occasion on which Mr. *Howard* and Lady *Elizabeth* sat up together till three o'clock in the morning?

A. I remember they did one night in *Sussex*, about two years ago.

Q. Was there any thing remarkable happened

pened in the course of that morning? What was the state of her Ladyship's health?

A. She seemed to be very much flurried and agitated.—Mr. *Howard* called me, and she told me, in his presence, she had been in an hysterical fit—he brought her some medicines to relieve her.

Q. Had you any opportunity of knowing how the time had been employed before she went into this fit?

A. Her Ladyship said, she had been talking to Mr. *Howard*, but she did not tell me what.

Q. You had not an opportunity of hearing how they were employed, but the conversation was protracted to a late hour, which ended in a fit?

A. Yes sir, they were frequently quarrelling.

Q. How long ago is this?

A. It is three years ago.

Q. You have lived perhaps in other families besides this?

A. No, Sir, I have not.

Q. I would ask you, upon the whole, as far as you could judge, and having many opportunities of being about the person of this lady,

lady, could there be a state of greater distress than there was between her and Mr. Howard?

A. They were very unhappy for three years before their final separation.

Q. You have stated her Ladyship informed you the cause of her unhappiness was, that she had the misfortune to be married to a man whom she did not like?

A. She has frequently told me so.

Q. When did she first tell you so?

A. After I had been some few months in the family.

Mr. ERSKINE—Mr. Howard does not change any adultery till after the birth of his child, which was in August 1791.

Re-examined by Mr. Dampier.

Q. Do you know Mr. Bingham?

A. No, I do not.

Q. Did you ever go out with Lady Elizabeth?

A. No, never, except in travelling.

Q. You say you have frequently heard words between them?

A. I have.

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Q. Do

Q. Do you know the cause of the words that passed between them?

A. I suppose they were unhappy.

JURYMAN. Did you ever see any mark of ill usage from Mr. Howard to her Ladyship?

A. No, Sir, never.

Q. How did Lady Elizabeth behave herself to her servants?

A. Always extremely well.

Mr. DAMPIER. Was Mr. Howard apparently jealous of any person?

A. I do not recollect—I suppose he was jealous of Mr. Bingham.

Q. Was that the subject of the quarrel?

A. I do not know, I never heard his name mentioned.

Examined again by Mr. Garrow.

Q. In the first place, during the whole time that you were in their service, you never saw Mr. Bingham, nor heard his name mentioned?

A. I did not.

Q. You have likewise said that the cause of her Ladyships unhappiness was, that she had the misfortune to be married to a man she disliked?

A. She did.

Q. She never told you who she liked?

A. No, Sir. I never heard his name.

Examined again by Mr. *Mingay*.

Q. You have told us you never saw Mr. *Howard* shew any unkindness to Lady *Elizabeth*.

A. No, Sir.

JOHN PEARSON examined by Mr. MIN-GAY.

Q. *Pearson*, what are you?

A. I am groom to Mr. *Bingham*.

Q. I believe you attended him occasionally in riding out about this great town?

A. Yes, Sir.

Q. Do you know Lady *Elizabeth Howard*?

A. I do.

Q. Do you remember Mr. *Bingham* going to the carriage of Lady *Elizabeth*?

A. I have, and she has come out of the carriage, and walked with Mr. *Bingham* in Kensington Gardens.

Q. How often?

A. I am not sure. By Mr. *Bingham's* orders. On what day was it?

A. I cannot tell, I have seen them more than three or four, or five times.

Q. Did not they use to walk in the Gardens together?

A. Yes, they did.

Q. How long have they walked together at one time in the Gardens?

A. Ten minutes, or half an hour, — he used to get off his horse and hand her Ladyship out of her carriage, and then they walked together into the Gardens.

Q. Was there any company with them?

A. Yes, there were some Ladies with them.

Lord Kenyon. Q. Always?

A. Yes, my Lord.

Mr. MINGAY. But whether they continued to walk together in the Gardens you can-

not say. Do you remember Mr. Bingham's son?

A. I cannot. Were you the person that ordered the carriage that carried Lady Elizabeth to Park Lane.

A. I am.

Q. By whose orders?

A. By Mr. Bingham's orders.

Q. On what day was it?

A. It

A. It was about the 24th or 25th of July last, I was ordered by my master to leave a chaise ready in Park Lane at 6 o'clock.

Q. When did you order the chaise?

A. At 4 o'clock on the same day.

Q. Did you see Lady Elizabeth come to Mr. Bingham?

A. I did, and they went off together, and have lived together ever since.

Cross examined by Mr. Garrow.

Q. Your orders were given at 4 o'clock to leave a chaise ready at six?

A. Yes, Sir.

Q. You said on these occasions, when your master handed Lady Elizabeth out of her carriage there were other ladies in the carriage with her, and that she was attended by her own servants, and accompanied by ladies of fashion and consideration, and that they went and walked in Kensington Gardens in the open day?

A. Just so, Sir.

Lord KENYON.—Q. When did you first see your master and Lady Elizabeth at Kensington Gardens?

A. I cannot recollect the first time.

Q. How

Q. How long have you lived with Mr. Bingham?

A. Howards of five years.

WILLIAM GUTHRIE examined by Mr.

BOWER.

Q. You were coachman to Mr. Howard?

A. I was.

Q. When did you enter upon his service?

A. On the 10th of January 1791.

Q. Did you use to drive Lady Elizabeth in her carriage?

A. Yes, Sir.

Q. Do you know Mr. Bingham?

A. I do, Sir.

Q. When did you first know him?

A. It was in April 1791.

Q. You did not know him before that time.

A. I did not.

Q. How did you come to know him?

A. By his constantly meeting her Ladyship in the Park, unless when her Ladyship was in the country.

Q. State how

Q. State how Mr. *Bingham* and Lady *Elizabeth* used to conduct themselves towards each other when they met?

A. The carriage stopped five or ten minutes, after which her Ladyship used to get out, and then she and Mr. *Bingham* went in to the Park first, and afterwards into Kensington Gardens.

Q. How often did this happen?

A. Almost every day.

Q. Did you drive her Ladyship to places of amusement?

A. I did, though she often kept a chair, and I never was there when she had a chair.

Q. You have been at the opera with her Ladyship?

A. I have, and have seen Mr. *Bingham* come and hand her into her carriage after the Opera was over. I remember Mr. *Bingham* and Lady *Elizabeth* going from the Operahouse to the Mansion-house, in the city, to a ball.

Q. When was that?

A. In the year 1792.

Lord KENYON.—Q. Was this after the Opera was over?

A. It

A. It was, my Lord.

Q. Was there any body in the carriage with Lady *Elizabeth* and Mr. *Bingham*?

A. There was a young Lady in the carriage with them, but who she was I do not know.

Mr. BOWER.—Q. Mr. *Bingham* did not go with Lady *Elizabeth* to public places, but was always the person who handed her into her carriage when she came back?

A. I never was at any public place with her Ladyship, but Mr. *Bingham* handed her into her carriage.

Q. Was he not paying her particular attention?

A. Without any doubt in the world.

Q. Did any other gentleman pay the same sort of attention as he did?

A. No, Sir.

Q. Was the attention of Mr. *Bingham* such as to make you take notice of it?

A. Yes, it was, Sir, and I did take notice of it, at the time as something extraordinary.

Q. This you say began so early as the year 1791?

A. Yes, Sir.

Q. Up

Q. Up to what time did these kind of attentions continue between Mr. *Bingham* and Lady *Elizabeth*?

A. I quited the service in the year 1793, and this sort of intercourse continued all the time I was in Mr. *Howard's* service.

Q. Mr. *Bingham* never was at Mr. *Howard's* house?

A. Never.

Cross examined by Mr. *Erskine*.

Q. Sir, I believe, your mistress always attended the Operas?

A. Very often, Sir.

Q. Mr. *Howard* is a young man, and, I believe very seldom frequents those public places?

A. Very seldom.

Q. He is not a lover of music perhaps?

A. I cannot say, Sir.

Q. So that Lady *Elizabeth* always went to the Opera by herself—Mr. *Howard* never there?

A. Sometimes not—Very often not.

Q. How long might this go on—Lady *Elizabeth* going to these public places?

A. I do not exactly know, Sir, it went on for a long time.

Q. Did her Ladyship use to go to Ranelagh?

A. She did, Sir.

Q. Did Mr. Howard go there?

A. He did not.

Q. How many horses had you.

A. I had four horses.

Q. I should think they were pretty tightly worked: Pray at what time did Lady Elizabeth use to come from Ranelagh?

A. We used to come from Ranelagh about two or three o'clock in the morning.

Q. I believe Mr. Bingham was frequently at Ranelagh?

A. I drove Mr. Bingham with another Lady and Lady Elizabeth, twice to Ranelagh.

Q. Was Mr. Howard then in town?

A. He was.

Q. Now, as there are only 24 hours in the day, pray when had Mr. Howard and Lady Elizabeth an opportunity of seeing each other?

A. He saw her at breakfast, at dinner, and what not.

Q. Besides

Q. Besides Ranelagh and the Opera, I believe you carried Lady *Elizabeth* to Assemblies and Routs?

A. I did not carry her, she went in a chair to these places.

Q. Do you know whether Mr. *Howard* went to Routs?

A. I do not.

Q. At what time did Lady *Elizabeth* come home?

A. At three, four, five, and six in the morning.

Q. I suppose Mr. *Howard* had gone to bed?

A. He had.

Q. And this, you say, went on for a great length of time?

A. Yes, Sir.

CHARLES BELLASIS examined by Mr. MIN-

Q. What are you, Sir?

A. I am a distant relation of Lord *Fanconberg*.

Q. Do you know Mr. *Howard*?

A. I do, and am a relation of his, as well as of her Ladyship?

Q. Were you at the house of Mr. Howard after he was married?

A. I was there in the month of October, in the year he was married.

Q. Were Mr. Howard and Lady Elizabeth there?

A. They were.

Q. Was Mr. Howard attentive to Lady Elizabeth?

A. I saw nothing to the contrary.

Q. Have you seen them at other times?

A. I have.

Q. I believe you have been present at times when they have had some bickerings?

A. I certainly have been present when they were not on the most pleasant terms.

Q. What was the cause of it?

A. The cause was, a jealousy that Mr. Howard entertained of Mr. Bingham.

Q. Except that, did you ever in your life hear or see Mr. Howard treat Lady Elizabeth with the slightest unkindness?

A. No: I cannot say I saw Mr. Howard treat her with unkindness.

Q. You

Q. You say some few words sometimes passed between them?

A. Yes, Sir, and it appeared to me they were owing to the jealousy Mr. Howard entertained of Mr. Bingham.

Cross Examined by Mr. GARROW.

Q. How early, Sir, had you an opportunity of observing what was the foundation of this jealousy?

A. I cannot recollect.

Q. You have told us you had several opportunities of observing how Mr. Howard and Lady Elizabeth lived together?

A. I had. I passed three weeks or a month with them in Yorkshire, and a fortnight or three weeks at Cheltenham.

Lord KENYON.—Q. When were you first aware of this jealousy?

A. I did not perceive any appearance of it in October, when I first visited them.

Mr. GARROW.—Q. When did you first see the symptoms of Mr. Howard's being jealous of Mr. Bingham?

A. To the best of my recollection, about eight or ten months after I saw them at Cheltenham;

Cheltenham; that is about a year and half after their marriage.

Q. Where did you happen to be when you first discovered this jealousy?

A. I was in town visiting in the two families; I was made a confidential friend on both sides of the question, and I used my best endeavours to make them agree as husband and wife ought to do.

Re-examined by **MR. MINGAY.** **A.**

Q. This, you say, Sir, was about two years after they were married?

A. It was.

Q. Do you think *Mr. Howard* could be very much pleased at seeing the attention paid *Lady Elizabeth* by *Mr. Bingham*?

A. Certainly, he could not.

MR. MINGAY—My Lord, I have done; this is my Case.

DEFENCE.

DEFENCE.

Mr. ERSKINE.

May it please your Lordship.

Gentlemen of the Jury—My learned Friend, as Counsel for the Plaintiff, has bespoke an address from me, as Counsel for the Defendant, which you must not, I assure you, expect to hear. He has thought it right, (in courtesy to me, as I am willing to believe, in part) and in part for the purposes of this Cause, that you should suppose you are to be addressed with a degree of eloquence which I never possessed, and which if I did I should be incapable at this moment of exerting; because the most eloquent man, in order to exert his eloquence, must have his mind free from embarrassment on the occasion on which he is to speak:—I am not in that condition. My learned Friend has expressed himself as the friend of the Plaintiff's family:—He does not regard that family more than I do; and I stand in the same predicament towards my own honorable client and his relations; I

know

know him and them, and because I know them, I regard them also: my embarrassment however only arises at being obliged to discuss this question in a public Court of Justice, because could it have been the subject of private reference, I should have felt none at all in being called upon to settle it.

Gentlemen, my embarrassment is abundantly increased, when I see present a noble person, high, very high in rank in this kingdom, but not higher in rank than he is in my estimation:—I speak of the Noble Duke of *Norfolk*, who most undoubtedly must feel not a little, at being obliged to come here as a witness for the Defendant, in the Cause of a Plaintiff so nearly allied to himself: I am persuaded no man can have so little sensibility, as not to feel that a person in my situation, must be a little embarrassed in discussing a question of this nature before such an audience, and between such parties as I have described.

Gentlemen, my learned Friend desired you would take care not to suffer argument, or observation, or eloquence, to be called into the field, to detach your attention from the Evidence in the Cause, upon which alone

would

you ought to decide: I wish my learned Friend, at the same moment, that he gave you that caution, had not himself given evidence of a fact, to which he stood the solitary witness in the Cause: I wish he had not introduced himself as a witness, without the ordinary ceremony of being sworn; I will not follow his example; I will not tell you, what I know from the conversation of my Client, nor give evidence of what I know myself: My learned Friend tells you, that nothing can exceed the agony of mind his Client has suffered, and that no words can describe his adoration of the lady he has lost: these most material points of the Cause rest however altogether on the single, unsupported, unsworn evidence of the Counsel for the Plaintiff; no relation has been called upon to confirm it, though we are told, that the whole house of *Fauconberg*, *Bellafyse*, and *Norfolk*, are in the avenues of the Court, ready to be called at my discretion; and yet my learned Friend is himself the only witness to it; though the facts, and most material facts indeed they would have been, might have been proved by so many illustrious persons.

Now, to shew you how little disposed I am to work upon you by any thing, but by proof: to convince you, how little desirous I am to practice the arts of speech as my only artillery in this cause, I will begin with a few plain dates, and as you have pens in your hands, I will thank you to write them down.

I shall begin with stating to you what my Cause is, and shall then prove it; not by myself, but by witnesses.

The parties were married on the 24th of April, 1789. The child that has been spoken of, and which has been spoken of in terms which gave me great satisfaction, as the admitted child of the Plaintiff, blessed with the affection of it's parent, and whom the noble person to whom it may become heir, can look upon without any unpleasant reflection: it has been stated by my learned Friend, that that child was born on the 12th of August, 1791; take that date, and the admission that this child must have been the child of Mr. *Howard*; an admission which could not have been rationally, or consistently made, but upon the implied admission, that no connection had existed, previously by which its existence might have

have been referred to the Defendant: on this subject therefore the Plaintiff must be silent; he cannot say the parental mind has been wrung: he cannot say hereafter, "NO SON OF MINE SUCCEEDING;" he can say none of these things; this child was born on the 12th of August, 1791, and as Mr. *Howard* is admitted to be the author of its existence, which he must have been, if at all in 1790; I have a right to say, that during all that interval, this gentleman could not have had the least reasonable cause of complaint against Mr. *Bingham*: his jealousy must of course have begun after that period; for had there been grounds for it before, there could be no sense in the admission of his Counsel, nor any foundation for that parental consolation which was brought forward in the very front of the Cause.

The next dry date is therefore, this 24th of July, 1793; and I put it to his Lordship, that there is no manner of evidence which can be pressed into this Cause previous to that time. Let me next disembarraß the Cause from another assertion of my learned Friend, namely, that a divorce cannot take place be-

fore the birth of this child, and that, if the child happens to be a son, which is one contingency, and if the child so born does not die, which is another contingency, and if the Noble Duke dies without issue, which is still another contingency, then this child might inherit the honors of the House of *Norfolk*: that I deny; my recent experience tells me the contrary. In a Case where Mr. *Stewart*, a gentleman in *Ireland*, stood in a similar predicament, the Lords and Commons of England, not only passed an Act of Divorce between him and his lady, but, on finding there was no access on the part of the husband, and that the child was not his, bastardized the issue.

What then remains in this Cause? Gentlemen, there remains only this, in what manner, when you have heard my evidence, for this is a Cause, which like all others must stand upon evidence, the Plaintiff shall be able to maintain that, which I have his Lordship's authority for saying, he must prove; viz. The loss of the comfort and society of his wife, by the seduction of the Defendant; that is the very gist of the action; the loss of society.

eiety, the loss of domestic happiness, and of peace, is his only legal complaint.

Now, before any thing can be lost, it must have existed; before any thing can be taken away from a man, he must have had it; before the seduction of a woman's affections from her husband can take place, he must have possessed those affections.

Gentlemen, my Friend, Mr. *Mingay*, acknowledges this to be the Law, and he shapes his Case accordingly: he represents his Client, a branch of a most illustrious House, as casting the eyes of affection upon a disengaged woman, and of rank equal to, or, at least, suitable to his own: he states a marriage of mutual affection, and endeavours to shew, that this young couple, with all the ardour of love, flew into each other's embraces: he shews, a child the fruit of that affection, and finishes with introducing the seductive adulterer coming to disturb all their happiness, and to destroy all the comfort which he describes: he exhibits the Defendant coming with all the rashness and impetuosity of youth, careless of the comforts he was about to destroy, and thinking of nothing but
how

how he could indulge his own lustful appetite, at the expence of another man's honour; while the unhappy husband is represented, as watching with anxiety over his beloved wife, anxious to secure her affections, and to preserve her virtue: if such a case, or any thing resembling it, is established, I shall leave the Defendant to whatever measure of damages, you chuse in your resentments to inflict. In order, therefore, to examine this matter, I shall support every syllable that I utter, with the most precise and uncontrovertible proofs: I will now draw up the curtains of this bless'd marriage-bed, whose joys are supposed to have been nipped in the bud, by the Defendant's adulterous seduction: nothing certainly is more delightful to the human fancy, than the possession of a beautiful woman in the prime of health, and youthful passion: it is beyond all doubt, the highest enjoyment which God in his benevolence, and for the wisest of purposes has bestowed upon his own image: I reverence, as I ought, that mysterious union of mind and body, which while it continues our species, lays the foundation of all the social affections, which build

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up,

up, and dignify the condition of human life; which binds the husband to the wife by ties more indissoluble, than laws can possibly create; and which, by the reciprocal endearments arising from a mutual passion, a mutual interest, and a mutual honor, lays the foundation of that parental affection which dies in the brutes, with the necessities of Nature, and which reflects back again upon the parents, the unspeakable sympathies of their offspring, and all the sweet consoling relations of social existence: while the curtains therefore are yet closed upon this bridal scene, your imaginations will naturally represent to you this charming woman, endeavouring to conceal sensations which modesty forbids the sex, however enamoured, too openly to reveal: wishing beyond expression, what she must not express; and seemingly resisting what she burns to possess.

Alas! Gentlemen, you must now prepare to see in the room of this, a scene of horror and of sorrow; you must prepare to see a noble lady whose birth surely required no further illustration; who had been courted to marriage before she ever heard even her husband's name; and whose affections were irretrievably

trievably bestowed upon, and pledged to my honourable and unfortunate Client. You must behold her given up to the Plaintiff by the infatuation of parents, and stretched upon this bed as upon a rack, as a legal victim to the shrine of Heraldry; torn from the arms of a beloved and impassioned youth, himself of noble birth, to secure the honors of a higher title.

Gentlemen, this is no high colouring for the purpose of a Cause; no words of an advocate can go beyond the plain unadorned effect of the evidence: I will prove to you that when she prepared to retire to her chamber she threw her desponding arms around the neck of her confidential attendant, and wept upon her as a criminal preparing for execution: I will prove to you, that she met her bridegroom with sighs and tears; the sighs and tears of afflicted love for *Mr. Bingham*, and of rooted aversion to her husband:—I think I almost hear her addressing him in the language of the poet,—

“ I thee,

and : *Howard* :
 " I tell thee, *Howard*,
 " Such hearts as our's were never pair'd above ;
 " Ill-suited to each other ; join'd, not match'd ;
 " Some fallen influence, a foe to both,
 " Has wrought this fatal marriage to undo us.
 " Mark but the frame and temper of our minds,
 " How very much we differ. Ev'n this day,
 " That fills thee with such extasy and transport,
 " To me brings nothing that should make me bless
 " it.
 " To think it better than the day before,
 " Or any other in the course of time,
 " That duly took its turn, and was forgotten."

Gentlemen, this was not the sudden burst of youthful disappointment, but the fixed and settled habit of a mind deserv'g of a happier fate : for I shall prove that she frequently spent her nights upon a couch, in her own apartments, dissolved in tears : that she frequently declared to her woman that she would rather go to Newgate than to Mr. *Howard*'s bed ; and it will appear, by his own confession, that for months subsequent to the marriage she obstinately refused him the privileges of a husband :—To all this it will be said by the Plaintiff's Counsel (as it has indeed been hinted already), that disgust and alienation from

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her

her husband could not but be expected; but that it arose from her affection for Mr. *Bingham*, and must be therefore charged upon his seduction: And I readily admit, that if Mr. *Bingham's* acquaintance with the lady had commenced subsequent to the marriage, the argument would be irresistible, and the criminal conclusion against him unanswerable: But has Mr. *Howard* a right to instruct his Counsel to charge my honourable client with seduction when he himself was the only seducer? My learned friend deprecates the power of what he terms my pathetic eloquence: Alas! Gentlemen; if I possessed it, the occasion forbids its exertion, because Mr. *Bingham* has only to defend *himself*, and cannot demand damages from Mr. *Howard* for depriving him of what was his by a title superior to any law which man has a moral right to make: Mr. *Howard* was never married: God and Nature forbid the bans of such a marriage: If, therefore, Mr. *Bingham* this day could have by me addressed to you his wrongs in the character of a Plaintiff demanding reparation, what damages might I not have asked for him, and, without the aid
of

of eloquence, what damages might I not have expected?

I would have brought before you a noble youth, who had fixed his affections upon one of the most beautiful of her sex, and who enjoyed hers in return. I would have shewn you their suitable condition, and painted the expectation of an honourable union, and would have concluded by shewing her to you in the arms of another, by the legal prostitution of parental choice in the teeth of affection: With child by a rival, and only reclaimed at last, after so cruel and so afflicting a divorce, with her freshest charms despoiled, and her very morals in a manner impeached, by asserting the purity and virtue of her original and spotless choice. Good God! imagine my client to be Plaintiff before you, and what damages are you not prepared to give him? and yet he is here as Defendant before you, and damages are demanded against him: Oh monstrous conclusion!

✓ Gentlemen, considering my client as perfectly safe, under these circumstances, I may spare a moment to render this cause beneficial to the public.

It involves in it an awful lesson ; and more instructive lessons are taught in courts of justice than the church is able to inculcate.—Morals come in the cold abstract from pulpits ; but men smart under them practically when we lawyers are the preachers.

Let the aristocracy of England, which trembles so much for itself, take heed to its own security : Let the nobles of England, if they mean to preserve that pre-eminence which in some shape or other must exist in every social community, take care to support it by aiming at that which is creative and alone creative of real superiority.

Instead of matching themselves to supply wealth, idly squandered in debauching excesses, or to round the quarters of a family shield ;—Instead of continuing their names and honors in cold and alienated embraces, amidst the enervating rounds of shallow dissipation, let them live as their fathers of old lived before them ;—Let them marry as Affection and Prudence lead the way, and in the ardours of mutual affection and the simplicities of rural life, lay the foundation of a vigorous race of men ; firm in their bodies, and moral
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from early habits :—Instead of wasting their fortunes and their strengths in the tasteless circles of debauchery, let them light up their magnificent and hospitable halls to the gentry and peasantry in the country, and extend the consolations of wealth and influence to the poor : Let them do this,—and instead of these dangerous and distracted divisions between the different ranks of life, and those jealousies of the multitude, big with destruction ; we should see our country living as one large and harmonious family, which will never be accomplished amidst vice and corruption, by wars or treaties, informations, *ex officio*, or all the tricks and artifices of the State :—Would to God this system had been followed in the instance before us ; Surely the noble house of *Fauconberg* needed no further illustration ; nor the still nobler house of *Howard*, with blood enough to have inoculated half the kingdom,—I desire to be understood to make reflections as general moral observations, and not personally to the families in question ; least of all to the noble house of *Norfolk*, the head of which is now present ; for no man, in my opinion, has

more at heart the liberty of the subject, and the honour of the country.

Having shewn the feeble expectation of happiness from this marriage, the next point to be considered is this: Did Mr. Bingham take advantage of that circumstance to encrease the disunion?—I answer, No. I will prove to you that he conducted himself with a degree of moderation and restraint, and with a command over his passions, which I confess I did not expect to find, and which in young men is not to be expected:—I shall prove to you, by Mr. Greville, that on this marriage taking place with the betrothed object of his affections, he went away a desponding man; his health declined; he retired into the country to restore it; and it will appear, that for months and months he never saw this lady until by mere accident he met her; and then so far was he from endeavouring to renew his connection with her, that she came home in tears, and said, he frowned at her as he passed:—This I shall prove to you by the evidence in the cause.

Gentlemen, that is not all;—it will appear that when he returned to town, he took no manner

manner of notice of this lady ; that her unhappiness was beyond all power of expression or description : And how indeed could it be otherwise after the account I have given you of the marriage ?—I shall prove by a gentleman who married one of the daughters of a person to whom this country is deeply indebted for his eminent and meritorious service (Marquis Cornwallis), that such was the utter reluctance of this lady to her husband, although in every respect in his connections honourable and correct, that he was not allowed even the privileges of a husband for months and months after the marriage. This I mentioned to you before, and only now repeat it in the statement of my proofs : Nothing better indeed could be expected : Who can controul the will of a woman ? Who can restrain or direct the passions ?—I beg leave to assure Mr. Howard, and I hope he will believe me when I say it, that I think his conduct towards this lady was just such as might have been expected from a husband who saw himself to be the object of disgust to the woman he had chosen for his wife ; and it is with this view only that I shall call
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a gentleman to say how Mr. Howard spoke of this supposed, but, in my mind, impossible object of his adoration: How is it possible indeed to adore a woman when you know her affections are rivetted to another?—It is unnatural!—A man may have that appetite which is common to the brutes, and too indelicate to be described; but he can never retain an affection which is returned with detestation. Lady Elizabeth, I understand, was at one time going in a phaeton,—“There she goes,” said Mr. Howard; “God damn her—I wish she may break her neck—I should take care how I got another.” This may seem unfeeling behaviour, but in Mr. Howard’s situation, Gentlemen, it was the most natural thing in the world, for they cordially hated one another.—At last, however, the period arrived when this scene of discord became insupportable, and nothing could exceed the generosity and the manly feeling of the noble person, (the Duke of Norfolk) whose name I have been obliged to use in the course of this cause, in his interference to effect that separation which is falsely imputed to Mr. Bingham:—He felt
so

so much commiseration for this unhappy lady that he wrote to her in the most affecting style;—I believe I have got a letter from his Grace to Lady Elizabeth, dated Sunderland, July the 27th, that is three days after their separation; but before he knew it had actually taken place: It was written in consequence of one received from Mr. Howard upon the subject:—Among other things he says, “ *I sincerely feel for you.*” Now if the Duke had not known at that time that Mr. Bingham had her earliest and legitimate affections, she could not have been an object of that pity which she received: She was indeed an object of the sincerest pity, and the sum and substance of this mighty seduction will turn out to be no more than this; that she was affectionately received by Mr. Bingham after the final period of voluntary separation: At four o’clock this miserable couple had parted by consent, and the chaise was not ordered till she might be considered as a single woman by the abandonment of her husband. Had the separation been legal and formal, I should have applied to his Lordship, upon the most unquestionable authorities,

ties, to nonsuit the Plaintiff; for this action being founded upon the loss of the wife's society, it must necessarily fall to the ground if it appears that the society, though not the marriage union, was interrupted by a previous act of his own: In that hour of separation I am persuaded he never considered Mr. Bingham as an object of resentment or reproach: He was the author of his own misfortunes, and I can conceive him to have exclaimed in the language of the poet, as they parted,

“ Elizabeth never lov'd me.

“ Let no man, after me, a woman wed

“ Whose heart he knows he has not; though she brings

“ A mine of gold, a kingdom for her dowry.

“ For let her seem, like the night's shadowy queen,

“ Cold and contemplative—he cannot trust her:

“ She may, she will, bring shame and sorrow on him;

“ The worst of sorrows, and the worst of shames!”

You have therefore before you, Gentlemen, two young men of fashion, both of noble families, and in the flower of youth: The proceedings of to-day, though not conclusive, cannot possibly be vindictive; they are indispensably preliminary to the dissolution

tion of an inauspicious marriage, which never should have existed: Mr. Howard may then profit by an useful, though an unpleasant experience, and be happier with a woman whose mind he may find disengaged:—while the parents of the rising generation, taking warning from the lesson which the business of the day so forcibly teaches, may avert from their families and the public that bitterness of disunion, which, while human nature continues to be itself, will ever be produced to the end of time from similar conjunctures.

Gentlemen, I have endeavoured so to conduct this cause as to offend no man:—I have guarded against every expression which could inflict unnecessary pain; and in doing so I know that I have not only served my client's interests, but truly represented his honorable and manly disposition. As the case before you cannot be considered by any reasonable man as an occasion for damages, I might here properly conclude; yet, that I may omit nothing which might apply to any possible view of the subject, I will conclude with reminding you that my client is a member of a

numerous family ; that though Lord Lucan's fortune is considerable, his rank calls for a corresponding equipage and expence : He has other children—one already married to an illustrious nobleman, and another yet to be married to some man who must be happy indeed if he shall know her value ; Mr. Bingham therefore is a man of no fortune ; but the heir only of, I trust, a very distant expectation. Under all these circumstances, it is but fair to believe that Mr. Howard comes here for the reasons I have assigned, and not to take money out of the pocket of Mr. Bingham to put into his own ; and you will consider whether it would be creditable for you to offer what it would be disgraceful for Mr. Howard to receive.

EVIDENCE FOR THE DEFENDANT.

Mrs. BISHOP examined by Mr. GARROW.

Q. Mrs. Bishop, when did you go into the family of Lord Falconberg ?

A. About five weeks before the marriage of Lady Elizabeth and Mr Howard.

Q. In

Q. In what capacity did you live in the family?

A. I was Lady *Elizabeth's* own woman.

Q. Do you remember the morning of her marriage?

A. I do: I attended her before she left her chamber that morning.

Q. What was her situation?

A. She cried very much, and seemed to be very unhappy.

Q. Where was the marriage solemnized?

A. In London, in Lord *Falconberg's* drawing-room, though Mr. *Howard* and Lady *Elizabeth* went afterwards out of town.

Q. Did you attend them?

A. I went before, in order to be ready to receive them.

Q. What was the situation of Lady *Elizabeth* upon her retiring to rest on the marriage night?

A. She cried exceedingly, appeared very much distressed, and trembled exceedingly.

Q. I believe she is young, and very beautiful?

A. She is, Sir.

Q. Mr.

Q. Mr. *Howard*, I believe, is much about her own age?

A. He is.

Q. A handsome, accomplished young man?

A. He is very much so.

Q. Did Lady *Elizabeth* say any thing to you on her marriage night?

A. She said, "Mind you call me early in the morning."

Q. Did you call her in the morning?

A. I did, about nine o'clock.

Q. Describe the situation in which you found Lady *Elizabeth* in the morning?

A. I went into the room after Mr. *Howard* went out; Lady *Elizabeth* was in bed; she threw her arms about my neck, and cried very much, but did not speak.

Q. Did you put your Lady to bed the next night?

A. I did.

Q. What was her situation the next night?

A. She cried much the same as before.

Q. Did you attend her constantly?

A. I

A. I did, and her unhappiness and crying continued to be repeated for many nights afterwards.

Q. For how long do you think did this constant unhappiness and shedding of tears continue after the marriage?

A. For about a fortnight they continued the same.

Q. How long did the family remain in the country at that time?

A. About three weeks; after which they returned to town that my Lady might be presented at Court.

Q. I believe Mr. Howard generally retired to rest before Lady Elizabeth?

A. In general he did.

Q. At what time did Lady Elizabeth usually come home?

A. She came home very late, at three, four, and five o'clock in the morning; and would sometimes sleep on her chair an hour, when I was forced to wake her, and put her to bed.

Q. Do you recollect Lady Elizabeth ever saying any thing about Newgate?

A. I recollect once she said, she would

as soon go to *Newgate* as to bed to her husband.

Q. What sort of spirits did Lady *Elizabeth* used to be in?

A. She was sometimes in very good spirits, and sometimes very dull.

Q. Do you remember her Ladyship while she was in town being in Kensington Gardens?

A. I do.

Q. How long was that after the marriage?

A. I cannot say.

Q. How did Lady *Elizabeth* appear?

A. She appeared then to be very unhappy.

Q. When the family was at Suffolk, I believe one of her Ladyship's sisters was in the house?

A. She was.

Q. Do you recollect Lady *Elizabeth* leaving her husband's bed, and going to her sister's?

A. I do.

Q. Do you remember her saying any thing about her wedding cloaths.

A. I

A. I spoke to her something about her wedding cloaths, and her reply was, "Indeed, Polly, when I had them made, I never thought of marrying Mr. Howard."

Q. From your constant attendance on your Lady's person, did you hear any words between her and Mr. Howard, and in your judgment was she unhappy or otherwise?

A. I never saw them quarrel, nor heard any words between them, but she continued to be very unhappy at times.

Q. You say that she was once very unhappy after having come from Kensington Gardens?

A. She was, though she said nothing; but I said, "Is there any thing the matter with your Ladyship." She replied, "I met Bingham in Kensington Gardens, he turned up his nose at me, and frowned."

Lord KENYON. Q. Did you ever hear Lady Elizabeth mention Mr. Bingham's name before?

A. Never before that time.

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Cross

Cross Examined by Mr. MINGAY.

Q. You say you never heard Mr. *Bingham's* name mentioned in Lord *Falconberg's* family?

A. I never did, though I have heard it mentioned in other families where I have lived.

Q. Did you not learn that Mr. *Howard* first offered himself as her husband at a ball at the Duchess of *Devonshire's*?

A. I do not know.

Q. Do you not know that Mr. *Howard* offered himself to this Lady before he ever spoke on the subject to her father?

A. I do not know.

Q. Do you know how he came to address himself to her?

A. I do not know.

Q. Did you see Mr. *Howard* in the family of Lord *Falconberg*, frequently before the marriage?

A. He was.

Q. Did you tell any body what Lady *Elizabeth* said to you respecting Mr. *Bingham*?

A. I never did.

Q. When

Q. When was it she said she had seen Bingham at Kensington Gardens?

A. I cannot tell the time, though I think it was the first year of their marriage.

Re-examined by Mr. GARROW.

Q. You never communicated to Mr Howard what Lady Elizabeth said to you?

A. Never.

Q. Was it possible it should have escaped his observation?

A. I do not know.

Q. We have heard that Mr. Howard used to go to bed before Lady Elizabeth?

A. Some times he was in bed before her a considerable time. Mr. Howard always came home before her Ladyship in London.

Q. Did he ever accompany her to any place of publick entertainment?

A. Never, that I recollect.

Mr. GREVILLE examined by Mr. ERSKINE.

Q. Mr. Greville. Do you know Mr. Bingham?

A. I do intimately.

Q. Do you know Lady Elizabeth Bellasis?

A. I do.

Q. Was Mr. Bingham acquainted with her previous to her marriage with Mr. Howard?

A. I know Mr. Bingham was attached to Lady Elizabeth before her marriage with Mr. Howard was made publick.

Q. Was their passion reciprocal?

A. I thought it was; indeed I have not the smallest doubt of it.

Mr. ERSKINE.—You are a pretty good judge of these matters, I believe Mr. Greville.

Q. Do you remember the marriage of Lady Elizabeth with Mr. Howard?

A. I do.

Q. What effect did it produce on him?

A. He was not well, and I went to Bath and Cheltenham with him.

Q. I believe, sir, Mr. Bingham did not see Lady Elizabeth, for many months after her marriage?

A. I understand he did not.

Q. Do you know Mr. Bingham?

A. I do intimately.

Q. Do

Cross Examined by Mr. MINGAY.

Q. Do you know when Mr. Howard paid his addresses to Lady Elizabeth?

A. I do not.

Q. Did he not pay his addresses to her at a ball at the Duchess of Devonshire's?

A. I believe he did.

Mr. SINGLETON examined by Mr. GARROW.

Mr. Singleton.—Q. I believe you are a neighbour of Mr. Howard's.

A. I was a near neighbour of his in the country for some time after his marriage.

Q. Had you frequent opportunities of seeing him, sir?

A. I frequently saw him and his lady in the spring, shortly after their marriage.

Q. How did she appear to be attached to him?

A. She did not appear to be extremely fond of Mr. Howard.—I should think they were not fond of each other.

Q. This you say was very shortly after their marriage.

A. It

A. It was, I saw them immediately after their coming into the country.

Q. Did you collect from Mr. *Howard*, any reason he had to be dissatisfied with the conduct of his Lady?

A. He mentioned to me, that he thought she was not particularly attached to him.

Q. Although I am not acquainted with the parties, I find myself embarrassed in this cause, as well as my learned friend.—Mr. *Singleton*, I must ask you, whether Mr. *Howard* has not communicated to you, that his Lady refused him the privileges of a husband?

Mr. SINGLETON—My Lord, am I bound to answer that question?

Lord KENYON—Sir, I admire your delicacy, but sitting here on a bench of justice, I am under the necessity of saying, that you must answer it.

Mr. SINGLETON—Mr. *Howard* certainly did mention to me, that his wife would not allow him to have any connexions with her.

Q. Pray, sir, how long was this after their marriage?

A. About six weeks or two months, and he laid down to that time she had refused.

Lord

LORD KENYON—This is a very unfortunate case—I feel extremely for the parties on the one side and on the other.—On the Plaintiff there rests no imputation whatever. I am frank to confess, that I think there is no doubt but that the Plaintiff must have a Verdict. The Damages are a very different consideration. I would not wish to forestall any thing that might be given in evidence.

MR. ERSKINE.—I have a great deal of distressing evidence yet to produce, though I am perfectly ready to leave it to your Lordship.

MR. MINGAY—I wish to conduct myself as an advocate, and to state such observations as occur to me in answer to the evidence.

LORD GEORGE CONWAY *examined by Mr.*
ERSKINE.

Q. My Lord, I believe you know Mr. Bingham?

A. I do.

Q. Do you know whether Mr. Bingham, and Lady Elizabeth Bellayfis, were acquainted before her marriage with Mr. Howard, and whether they were fond of each other?

A. I

A. I really believe so, I have seen them often together before her marriage with Mr. Howard.

Q. Have you any doubt, my Lord, of their attachment before her marriage with Mr. Howard?

A. I have not.

Q. We have been told that Mr. Bingham left town after Lady Elizabeth's marriage?

A. He did, and I think he avoided her after her marriage.

Captain CHARLES MORRIS was here called,

Mr. ERSKINE—My Lord, before I examine Mr. Morris, I wish to state to your Lordship, and to my learned friends on the other side, that I do not wish to push this case any further, by producing more evidence which must distress every man who hears it, and particularly those who are nearly connected with the parties.

Here the case on behalf of the Defendant closed. It being agreed after a short consultation between the parties, that no more evidence should be called, and that after hearing the

the address of the learned Judge as it stood, the Jury should determine.

Lord KENYON.

Gentlemen of the Jury :

This cause is now arrived at that period which calls for the discharge of a duty which peculiarly belongs to you—To ascertain the damages which the Plaintiff comes by this action to demand, and which justice requires for the injury he has received.

I had not been long on the seat of justice in this court, before I found that I should best discharge my duty to the public, by endeavouring to make the law of the land subservient to the law of morality and religion; and therefore, in the course of the several cases that have come before me, I have discriminated, as well as I could, their different complexions; and when I have perceived a considerable degree of guilt in the accused party, I have pressed on Juries to enforce the penalties of the law on such party, and I have the satisfaction to find that juries have gone with

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me in that respect, and have been desirous of lending their assistance to enforce the principles of justice, and render the law of the land subservient to the law of religion and morality. I have found juries co-operate with me in trying how far the morality of a libertine age could be corrected by letting the publick know, they best consult their own interest by discharging faithfully, the duties they owe to God and to society.

Gentlemen, Causes of this kind have very different complexions. Some causes have been before me, in the course of which I have thought it incumbent on juries, to discharge the Plaintiff with small damages.—Some causes have come before me, wherein I have thought the very cause of action failed; and therefore the Plaintiff has been nonsuited.—There have been causes also, in which juries have given very large damages.—This cause has about it, a character and complexion different from all that ever I witnessed, Different from all that I have ever read off in the history of the jurisprudence of this country. It is emphatically, an unfortunate cause.—If I had found the Defendant making use of the
friendship

friendship of the Plaintiff; entering his house, and obtaining the confidence of his wife—If I found him using the liberty of access to the Plaintiff's family as the means of seducing his wife, I should have thought, that no damages put upon the record could be too high for the Plaintiff to receive at your hands—But this is not that case—To the Plaintiff no imputation upon earth belongs: he appears to have acted with the honour belonging to the most illustrious house of which he is so important a member. But the moment he received this Lady's hand, alas! he did not receive her affections. She was never seduced from his arms; because her affection was engaged from the beginning, and irredeemably fixed upon another person, and that other the defendant. To the defendant too, I must say, that for a great part of the time, I can impute no blame at all. He did that which was difficult for a young man to do, and he seems to have bridled his passion for a considerable time; he retired with his friends, branches of honourable families, into the country, to try whether absence might not wean his affection from this

—do you know L^{dy} 2 Lady:

Lady: unfortunately for both, the absence was not of very long continuance: he returned to town: they saw each other: the half extinguished flame was again lighted up, and the unfortunate consequences which you have heard, followed. It is for you, Gentleman, on this occasion, to ascertain the damages—The action complains of the loss of comfort and society, a man ought to have and feel in the married state: unfortunately for the Plaintiff, I fear this comfort and society were hardly begun with him: but still he has a right, an undoubted right, to expect some damages. I should, Gentlemen, on this occasion, give damages, not merely nominal; nor damages to a very large amount: these damages will shew the sense you have of the morality of the defendant. You will not give damages which will press a young man, who, it is clear, at one time of his life, had weaned himself from the unfortunate snare, which the beauty and perfections of this lady had got him into. On these considerations I shall leave the case intirely in your hands, you will decide it better from your own suggestions, than from any observations

servations that can be made to you, I am sure.

The jury gave a Verdict for the Plaintiff,
Damages 1000 l.

FINIS.

[22]

Directions that can be made to you, I am
The jury gave a Verdict for the Plaintiff.
Damages \$1000.

FINIS

